



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R03-RCRA-2022-0351; FRL-9947-02-R3]

Virginia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Virginia has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is hereby authorizing Virginia's revisions through this direct final rule. In the “Proposed Rules” section of this issue of the *Federal Register*, EPA is also publishing a separate document that serves as the proposal to authorize these revisions. EPA believes this action is not controversial and does not expect comments that oppose it. Authorization of Virginia’s revisions to its hazardous waste program will take effect 30 days after the conclusion of the public comment period unless EPA receives written comments that oppose this authorization. If EPA receives adverse comments pertaining to this State revision, then EPA will publish in the *Federal Register* a timely withdrawal of this direct final rule before it takes effect, and the separate document in the “Proposed Rules” section of the *Federal Register* will serve as the proposal to authorize any revisions made based on comments received.

DATES: This final authorization will become effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives any such comments, then EPA will publish a timely withdrawal of this direct final rule in the *Federal Register*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-RCRA-2022-0351 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets. The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Jacqueline Morrison, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. Please also contact Jacqueline Morrison if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Jacqueline Morrison, RCRA Programs Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency Region III, Four Penn Center, 1600 John F. Kennedy Blvd. (Mail code 3LD30), Philadelphia, PA 19103-2852, Phone number: (215) 814-5664; email: Morrison.Jacqueline@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to the State programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised to become

more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to state programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have we made in this rule?

On January 10, 2022, Virginia submitted a final program revision application (with subsequent corrections) seeking authorization of revisions to its hazardous waste program that correspond to certain Federal rules promulgated through February 22, 2019.

EPA concludes that Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants Virginia final authorization to operate its hazardous waste program with the revisions described in its authorization application, as outlined below in Section G of this document. Virginia has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Virginia has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

This action serves to authorize revisions to Virginia's authorized hazardous waste program. This action does not impose additional requirements on the regulated community

because the regulations for which Virginia is being authorized by this action are already effective and are not changed by this action. Virginia has enforcement responsibilities under its State hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Virginia has taken its own actions.

D. Why was there not a proposed rule before this rule?

Along with this direct final rule, EPA is publishing a separate document in the “Proposed Rules” section of this issue of the *Federal Register* that serves as the proposed rule to authorize these State program revisions. EPA did not publish a proposed rule before this issue of the *Federal Register* because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if EPA receives comments that oppose this action?

If EPA receives adverse comments pertaining to this State revision, EPA will withdraw this direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. EPA will base any further decision on the authorization of Virginia's program revisions on the proposed rule mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all relevant comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What has Virginia previously been authorized for?

Virginia initially received final authorization of its hazardous waste program effective December 18, 1984 (49 FR 47391). EPA granted authorization for revisions to Virginia's regulatory program effective August 13, 1993 (58 FR 32855); September 29, 2000 (65 FR

46607); June 20, 2003 (68 FR 36925); July 10, 2006 (71 FR 27204); July 30, 2008 (73 FR 44168); and November 04, 2013 (78 FR 54178).

G. What revisions are we authorizing with this action?

On January 10, 2022, Virginia submitted a final program revision application (with subsequent corrections) seeking authorization of additional revisions to its hazardous waste program, as published in the Code of Federal Regulations from June 13, 2011, through February 22, 2019.

EPA now makes a direct final rule, subject to receipt of written comments that oppose this action, that Virginia's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Virginia final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Virginia seeks authority to administer the Federal requirements that are listed in Table 1 of this document. Virginia incorporates by reference these Federal provisions, in accordance with the dates specified in Title 9, Virginia Administrative Code (9VAC 20-60-18). This Table 1 lists the Virginia analogs that are being recognized as no less stringent than the analogous Federal requirements.

The Virginia Waste Management Act (VWMA) enacted by the 1986 session of Virginia's General Assembly and recodified in 1988 as Chapter 14, Title 10.1, Code of Virginia, forms the basis of the Virginia program. These regulatory references are to Title 9, Virginia Administrative Code (9 VAC) effective through August 23, 2019. On November 4, 2013 (78 FR 54178, September 3, 2013), Virginia received approval of Program Revision V to its hazardous waste management program. Since then, Virginia's regulations have been updated to include Federal regulatory changes. This application, Program Revision VI, addresses certain changes made to Virginia's hazardous waste program between January 1, 2011, and August 23, 2019.

TABLE 1—VIRGINIA'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of Federal requirement (revision checklists¹)	Federal Register Page and Date	Analogous Virginia Authority
RCRA Cluster VIII		
Exclusion of Recycled Wood Preserving Wastewaters, Revision Checklist 167F	63 FR 28556, May 26, 1988	9VAC20-60-18; 9VAC20-60-261 A
RCRA Cluster XXI		
Revisions of the Treatment Standards for Carbamate Wastes, Revision Checklist 227	76 FR 34147, June 13, 2011	9VAC20-60-18; 9VAC20-60-268
Description of Federal requirement (revision checklists¹)	Federal Register Page and Date	Analogous Virginia Authority
RCRA Cluster XXII		
Hazardous Waste Technical Corrections and Clarifications, Revision Checklist 228	77 FR 22229, April 13, 2012	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-266
RCRA Cluster XXIII		
Conditional Exclusions for Solvent Contaminated Wipes, Revision Checklist 229	78 FR 46448, July 31, 2013	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-261
Conditional Exclusion for Carbon Dioxide (CO ₂) Streams in Geologic Sequestration Activities, Revision Checklist 230	79 FR 350, January 3, 2014	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-261
Hazardous Waste Electronic Manifest Rule, Revision Checklist 231	79 FR 7518, February 7, 2014	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-262; 9VAC20-60-263; 9VAC20-60-264; 9VAC20-60-265
Revisions to the Export Provisions of the Cathode Ray Tube Rule, Revision Checklist 232	79 FR 36220, June 26, 2014	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-261
RCRA Cluster XXIV		
Revisions to the Definition of Solid Waste: Changes affecting all non-waste determinations and variances, Revision Checklist 233A	80 FR 1694, January 13, 2015	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-1390; 9VAC20-60-1420
Revisions to the Definition of Solid Waste: Speculative Accumulation, Revision Checklist 233C	80 FR 1694, January 13, 2015	9VAC20-60-18; 9VAC20-60-261

Revisions to the Definition of Solid Waste: 2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule, Revision Checklist 233D2	80 FR 1694, January 13, 2015 83 FR 24664 May 30, 2018	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-261; 9VAC20-60-1390; 9VAC20-60-1420.
Description of Federal requirement (revision checklists¹)	Federal Register Page and Date	Analogous Virginia Authority
Revisions to the Definition of Solid Waste: Remanufacturing exclusion, Revision Checklist 233E	80 FR 1694, January 13, 2015	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-261
Response to Vacatur of the Comparable Fuels Rule and the Gasification Rule, Revision Checklist 234	80 FR 18777, April 8, 2015	9VAC20-60-18; 9VAC20-60-260; 9VAC20-60-261
Disposal of Coal Combustion Residuals from Electric Utilities, Revision Checklist 235	80 FR 21302, April 17, 2015	9VAC20-60-18; 9VAC20-60-261
RCRA Cluster XXV		
Imports and Exports of Hazardous Waste, Revision Checklist 236	81 FR 85696, November 28, 2016 82 FR 41015, August 29, 2017 83 FR 38263, August 6, 2018	9VAC20-60-18; 9VAC20-60-260, 261, 262, 263, 264, 265, 266, 267, and 273
Hazardous Waste Generator Improvements Rule, Revision Checklist 237	81 FR 85732, November 28, 2016	9VAC20-60-18; 9VAC20-60-260, 261, 262, 263, 264, 265, 267, 268, 270, 273, and 279
RCRA Cluster XXVI		
Confidentiality Determinations for Hazardous Waste Export and Import Documents, Revision Checklist 238	82 FR 60894, December 26, 2017	9VAC 20-60-18; 9VAC20-60-260, 261, and 262
RCRA Cluster XXVII		
Safe Management of Recalled Airbags, Revision Checklist 240	83 FR 61552, November 30, 2018	9VAC20-60-18; 9VAC20-60-260, 261, 262
Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, Revision Checklist 241	84 FR 5816, February 22, 2019	9VAC20-60-18; 9VAC20-110-110; 9VAC20-60-261, 262, 264, 265, 266, 268, 270, and 273

¹ A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the *Federal Register*. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization Web page at <https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra>.

2. State-Initiated Revisions

In addition, Virginia will be authorized to carry out, in lieu of the Federal program, State-initiated revisions to provisions of the State's program. These State-initiated revisions to some of Virginia's existing regulations are for the purpose of correcting errors and adding consistency or clarification to the existing regulations. The following State provisions were previously equivalent, more stringent, or broader in scope and now they are all equivalent and analogous to the RCRA provisions found at Title 40 of the Code of Federal Regulations: 9VAC20-60-315 H, 9VAC20-60-420 E, 9VAC20-60-430 F, 9VAC20-60-440 A, B, C, C 1, D, and E, 9VAC20-60-450 (repealed), 9VAC20-60-480 E 1, L, and M, 9VAC20-60-490 B 3, and 9VAC20-60 Forms.

H. Where are the revised Virginia rules different from the Federal rules?

When revised State rules differ from the Federal rules in the RCRA State authorization process, EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable.

1. Virginia Requirements That Are More Stringent Than the Federal Program.

The following Virginia provisions are more stringent than the Federal program.

- Virginia is more stringent than the Federal program at 9VAC20-60-490 C 4 by requiring that reports be submitted to the State as well as to Federal authorities.
- Virginia is more stringent than the Federal program at 9VAC20-60-262 B 4 by requiring that large quantity generators notify the State of each location where hazardous waste is accumulated.

- Virginia is more stringent than the Federal program at 9VAC20-60-262 B 6 by requiring any receiving treatment, storage, or disposal facility to hold a permit; Virginia is also more stringent than the Federal program by requiring an EPA identification number for transporters.
- Virginia's regulations, at 9VAC20-60-260 A, incorporate by reference the Federal regulations at 40 CFR part 260, with some additions, modifications, and exceptions, including the modification at 9VAC20-60-260 B 2. This provision is more stringent than the Federal program in that it imposes additional requirements for the management of hazardous secondary materials in a land-based unit.
- On January 13, 2015, EPA issued a final rule that became effective on July 13, 2015, revising several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under RCRA subtitle C (80 FR 1694). The revisions included adding conditions to certain exclusions and adding a codified definition of "contained." On May 30, 2018, EPA issued the final rule: "Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule," 83 FR 24664. Because the 2018 rule included provisions that are less stringent than the 2015 revisions, states that adopted the 2015 rule were not required to adopt the 2018 rule. The Virginia regulations, at 9VAC20-60-18, 9VAC20-60-260 B 9, 9VAC20-60-260 B 14, and 9VAC20-60-261 B 14, specify that Virginia is retaining the 2015 rules. In that respect, the Virginia regulations are more stringent than the Federal program.

2. Virginia Requirements That are Broader in Scope Than the Federal Program.

Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, States cannot receive authorization for such regulations. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Virginia law.

The following Virginia provisions are broader in scope than the Federal program in that they require the payment of fees that are not required by the Federal program:

- 9VAC20-60-1280 B requires the payment of permit application fees.
- 9VAC20-60-1284 B 2 requires the payment of annual fees.
- 9VAC20-60-1260 B, C, D, E, F, and G 3, insofar as these provisions address hazardous waste program fees.
- 9VAC20-60-1270 B, C, C 5, D, and E set forth the method by which application fee amounts shall be determined.
- 9VAC20-60-1283 A, B, and C set forth the method by which annual fee amounts shall be determined.
- 9VAC20-60-1285 Table 1 sets forth the schedule of permit application fees.

I. Who handles permits after this authorization takes effect?

After this authorization revision, Virginia will continue to issue permits covering all the provisions for which it is authorized and will administer all such permits. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that it issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time as EPA formally transfers responsibility for a permit to Virginia and EPA terminates its permit, EPA and Virginia agree to coordinate the administration of such a permit in order to maintain consistency. EPA will not issue any more new permits or new portions of permits for the provisions listed in Section G of this document after the effective date of this authorization. EPA will continue to implement, and issue permits for HSWA requirements for which Virginia is not yet authorized.

J. How does this action affect Indian country in Virginia?

Virginia is not authorized to carry out the hazardous waste program in Indian country (18 U.S.C. 1151) within the State. EPA will implement and administer the RCRA program on these lands.

K. What is codification and is EPA codifying Virginia's hazardous waste program as authorized in this rule?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Virginia's revisions at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart VV, for this authorization of Virginia's program revisions until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution

of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-

income populations in the United States. EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, because it approves pre-existing State rules that are no less stringent than existing Federal requirements and imposes no additional requirements beyond those imposed by State law. For these reasons, this rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will not be effective until **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Adam Ortiz,
Regional Administrator, EPA Region III.

